

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JUDGE KARAS

-----X
FELIPE BENITEZ and MARIA BENITEZ,

Plaintiffs,

- against -

TERRENCE D. WILLIS and
FISCHER TRUCKING, INC.,

Defendants.
-----X

CIVIL ACTION NO.:

07 CIV 9534

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK:

FILED
U.S. DISTRICT COURT
2007 OCT 25 AM 11:57
S.D. OF NY.

Defendant, Fischer Trucking, Inc., by and through its attorneys, Rawle & Henderson LLP,
respectfully avers as follows:

1. On or about September 12, 2007, plaintiffs commenced a civil action in the Supreme Court of New York, Dutchess County, against defendants, Terrence D. Willis and Fischer Trucking, Inc. See Plaintiffs' Summons & Verified Complaint annexed hereto as Exhibit "A."

2. According to the Complaint, this lawsuit arose out of a motor vehicle accident which allegedly occurred on May 31, 2007, in the Town of Newburgh, County of Orange, State of New York. See Exhibit "A."

3. The Summons and Verified Complaint, being the original process in this case, was first received by defendant, Fischer Trucking, Inc., no earlier than September 27, 2007.

4. Therefore, this Notice of Removal was filed within the time period set forth in 28 U.S.C. §1446(b).

5. Upon information and belief, the Summons and Verified Complaint, being the original process in this case, have not been served upon defendant, Terrence D. Willis, to date.

6. At all times material hereto, Fischer Trucking, Inc., was and is a corporation incorporated under the laws of the State of Indiana, with its principal place of business located in Fort Wayne, Indiana.

7. At all times material hereto, defendant, Terrence D. Willis, was and is a citizen and resident of the State of Ohio.

8. At all times material hereto, plaintiffs, Felipe Benitez and Maria Benitez, were and are citizens of the State of New York, and they reside in Dutchess County, New York. See Exhibit "A," at ¶ 1.

9. Diversity of citizenship within the meaning of 28 U.S.C. § 1332, exists between plaintiffs and defendants since:

- (a) plaintiffs are citizens and residents of the State of New York; and
- (b) defendants are not citizens or residents of the State of New York.

10. Furthermore, diversity of citizenship existed at the time the action sought to be removed was commenced and continues through the time of filing of this notice, such that defendants are entitled to removal pursuant to 28 U.S.C § 1441 and 28 U.S.C. § 1446.

11. In the Complaint, plaintiffs demand unspecified damages, as they must pursuant to New York's CPLR § 3017(c) See Exhibit "A."

12. In the Complaint, plaintiffs alleged that they sustained serious injuries and became permanently sick, sore, lame and disabled, Exhibit "A" at ¶¶ 11 and 13. Moreover, plaintiff, Maria Benitez set forth a claim for loss of society, consortium and services of her

plaintiff spouse, all to her damage in an amount exceeding the monetary jurisdiction of all lesser courts.

13. Based upon a fair reading of the Complaint, plaintiffs have set forth a claim in which an amount in excess of the jurisdictional limit of \$75,000, exclusive of interests and costs, is at stake.

14. The undersigned has been retained as counsel for defendant, Terrence D. Willis, and he consents to this removal.

WHEREFORE, defendant, Fischer Trucking, Inc., prays that the above-captioned action now pending in the Supreme Court of New York for Dutchess County, be removed therefrom to this Honorable Court.

RAWLE & HENDERSON LLP

By: 

Jon Michael Dumont
James R. Callan
Attorneys for Defendant,
Fischer Trucking, Inc.
140 Broadway, 46th Floor
Suite 4636
New York, New York 10005
(212) 858-7570
File No.: 801821

Dated: October 24, 2007.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant's Notice of Removal was served upon the below listed counsel via overnight delivery, postage pre-paid, on this 24th day of October, 2007.

GOLDSTEIN & METZGER, LLP
40 Garden Street
Poughkeepsie, New York 12601

RAWLE & HENDERSON LLP


James R. Callan

EXHIBIT A



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
FELIPE BENITEZ and MARIA BENITEZ,

Plaintiffs,

VERIFIED COMPLAINT

-against-

Index No:

TERRENCE D. WILLIS and FISCHER TRUCKING, INC.,

Defendant.
-----X

Plaintiffs, by their attorneys, GOLDSTEIN & METZGER, LLP, complaining of the
defendants, allege as follows:

1. At all times herein mentioned, plaintiffs were husband and wife and resided in the County of Dutchess, State of New York.
2. Upon information and belief, at all times herein mentioned, defendant, Terrence D Willis, resided in the State of Ohio.
3. Upon information and belief, at all times herein mentioned, defendant, Fischer Trucking, Inc., was a foreign corporation, having its principal place of business in the State of Indiana.
4. Upon information and belief, at all times herein mentioned, defendant, Terrence D. Willis, was employed by defendant, Fischer Trucking, Inc.
5. At all times herein mentioned, plaintiff, Felipe Benitez, was the owner and operator of a motor vehicle bearing New York registration number GANG05 for the year 2007.
6. Upon information and belief, at all times herein mentioned, defendant, Terrence D. Willis, was the operator of a motor vehicle owned by defendant, Fischer Trucking, Inc., bearing Indiana registration number 328781 for the year 2007.

7. Upon information and belief, at all times herein mentioned, defendant, Terrence D. Willis, was operating the motor vehicle with the permission and consent, either actual or implied, of its owner, defendant, Fischer Trucking, Inc.
8. Upon information and belief, at all times herein mentioned, defendant, Terrence D. Willis, was in the course of his employment with defendant, Fischer Trucking, Inc., when the accident occurred.
9. At all times herein mentioned, Route 300, at its intersection with Plattekill Turnpike, in the Town of Newburgh, County of Orange, State of New York, was a public roadway.
10. On or about May 31, 2007, at approximately 2:23 P.M., an accident occurred on said public roadway.
11. That said accident and all of plaintiff, Felipe Benitez's injuries resulting therefrom were caused and brought about solely through the negligence of the defendants.
12. Limitations on liability set forth in Article 16 of the Civil Practice Law and Rules do not apply to the instant action in that this action comes under one of the exemptions set forth in Section 1602 of the CPLR.
13. That by reason of the said accident and the negligence of the defendants, plaintiff, Felipe Benitez, became permanently sick, sore, lame and disabled, in an amount exceeding the monetary jurisdiction of all lesser courts in the State of New York.

AS AND FOR A SECOND CAUSE OF ACTION

14. Plaintiffs repeat and reallege all prior paragraphs as if fully set forth herein.
15. That by reason of the foregoing accident, plaintiff, Maria Benitez, has lost the aid, comfort, society, consortium, services and care of her spouse, plaintiff, Felipe Benitez, all to her damage in an amount exceeding the monetary jurisdiction of all

lesser courts in the State of New York.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

- (a) In an amount commensurate with the injuries sustained by plaintiff, Felipe Benitez, against defendants, Terrence D. Willis and Fischer Trucking, Inc., on the First Cause of Action;
- (b) In an amount commensurate with the loss of services sustained by plaintiff, Maria Benitez, against defendants, Terrence D. Willis and Fischer Trucking, Inc., on the Second Cause of Action;

together with the costs, disbursements and attorneys' fees of this action and such other and further relief which as to this Court may seem just and proper.

Dated: September 6, 2007
Poughkeepsie, New York

Yours, etc.

GOLDSTEIN & METZGER, LLP
Attorneys for Plaintiffs

By: 

Paul J. Goldstein, Esq.
40 Garden Street
Poughkeepsie, NY 12601
(845) 473-7000

VERIFICATION

STATE OF NEW YORK)

ss:

COUNTY OF DUTCHESS)

FELIPE BENITEZ, being duly sworn, deposes and says:

I am the plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe to be true.


FELIPE BENITEZ

Sworn to before me this
6 day of September, 2007.


Notary Public

MARYANNE QUICK
Notary Public, State of New York
Qualified in Ulster County
#01QM4788089
Commission Expires March 30, 2011

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS**

FELIPE BENITEZ and MARIA BENITEZ,

Plaintiffs,

- against -

TERRENCE D. WILLIS and FISCHER TRUCKING, INC.,

Defendants.

SUMMONS & VERIFIED COMPLAINT

GOLDSTEIN & METZGER, LLP

**Attorneys for Plaintiffs
46 GARDEN STREET
POUGHKEEPSIE, NEW YORK 12601
(845) 473-7000**

Pursuant to 22 NYCRR 130-1.3, the undersigned, an attorney duly admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: September 6, 2007

Signature

Print Signer's Name: Paul J. Goldstein, Esq.

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

NOTICE OF ENTRY that the within is a (certified) true copy of a(n) entered in the office of the clerk of the within named Court on

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the Judges of the within named Court at 2003, at M.

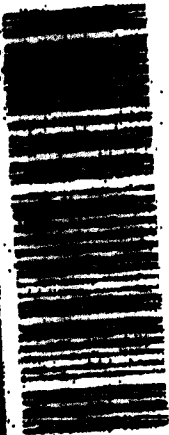
Dated:

GOLDSTEIN & METZGER, LLP

**Attorneys for Plaintiffs
46 GARDEN STREET
POUGHKEEPSIE, NEW YORK 12601
(845) 473-7000**

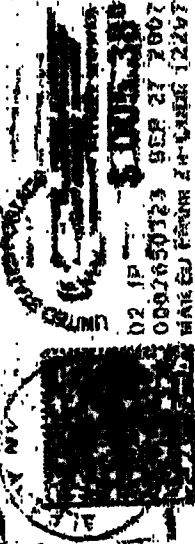
To:

CERTIFIED MAIL



PH05 3110 0002 6146 334A

Holman & Metzger, LLP
3 Garden Street
Nightkeepsie, NY 12601



Fischer Trucking, Inc.
4808 Kroemer Rd., Ste. 101
Fort Wayne, IN

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